

**Johnstown Corporation and/or Stardyne, Inc. and  
United Steelworkers of America, AFL-CIO,  
CLC. Case 6-CA-22363**

January 6, 1997

**DECISION AND ORDER**

BY CHAIRMAN GOULD AND MEMBERS FOX AND  
HIGGINS

On December 6, 1994, the United States Court of Appeals for the Third Circuit remanded this case to the National Labor Relations Board with directions to reconcile contradictory case law regarding the relationship between alter ego and single-employer concepts. The Board is required to follow or repudiate the prior holding in *Gartner-Harf Co.*, 308 NLRB 531 (1992), or explain the failure to do so.<sup>1</sup>

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The complaint alleged that the Respondents, Johnstown Corporation and Stardyne, Inc., are a single employer and alter egos, and, in the alternative, that Stardyne is a successor to Johnstown's laser operation. The administrative law judge found that Johnstown and Stardyne are alter egos and, in the alternative, that Stardyne is a successor to Johnstown, but that they are not a single employer.

The Board agreed with the judge's alter ego and successorship findings. The Board majority did not pass on whether Johnstown and Stardyne are a single employer, however, finding that issue immaterial in light of the alter ego finding.<sup>2</sup> In a concurring opinion, then-Member Raudabaugh agreed with the majority result but took issue with its failure to address the inconsistency between the decision in this case and the

Board's prior decision in *Gartner-Harf*, supra. In that case, the Board found that "alter ego is in effect a subset of the single employer concept (i.e., not all single employers are alter egos, but all alter egos by definition meet the criteria for single employer status)." 308 NLRB 533 at fn. 8.

On petitions for review and cross-application for enforcement of the Board's Order, the Third Circuit approved the Board's alter ego test and its application in this case.<sup>3</sup> The Court found merit, however, in the Respondents' contention that *Gartner-Harf* conflicts with a finding of alter ego here because the companies were found not to be a single employer. The court therefore remanded the case to the Board. In remanding the case, the court examined the Board's "related" but "distinct" alter ego and single-employer doctrines and observed that it could see "no reason why the alter ego doctrine *must* be considered a subset of the single employer doctrine."<sup>4</sup> (Emphasis added.)

We have reconsidered the Board's original Decision and Order in light of the court's remand and the statements of position submitted by the General Counsel and the Charging Party. We agree with the court's reasoning and analysis of the law. Accordingly, we repudiate the statement in *Gartner-Harf* that alter ego is a subset of the single employer concept. Our review discloses no support for this statement in the law. Rather, we agree that "alter ego" and "single employer" are related, but separate, concepts.<sup>5</sup>

Accordingly, we reaffirm the Decision and Order finding that the Respondent, Stardyne, is the alter ego of, or in the alternative, the successor to, Respondent Johnstown Corporation.

<sup>3</sup> 41 F.3d at 148-152.

<sup>4</sup> Id. at 152.

<sup>5</sup> For a summary of the current state of the law regarding the Board's alter ego and related doctrines, see also *NLRB v. Hospital San Rafael*, 42 F.3d 45 (1st Cir. 1994).

<sup>1</sup> *Stardyne, Inc. v. NLRB*, 41 F.3d 141 (3d Cir. 1994).

<sup>2</sup> 313 NLRB 170 (1993).